

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 746, CUTTACK, TUESDAY, APRIL 15, 2008/ CHAITRA 26, 1930

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 22nd March 2008

No.3731-li/1(J)-34/2006/LE.— In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award dated the 3rd October 2007 in Industrial Disputes Case No. 5/2007 of the Presiding Officer, Labour Court, Jeypore to whom the Industrial Dispute between the Chairman-*cum*-Managing Director, Orissa State Road Transport Corporation, Bhubaneswar and their workman Shri Nanda Kishore Padhy was referred for adjudication is hereby published as in the scheduled below: —

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER, LABOUR COURT, JEYPORE, KORAPUT
INDUSTRIAL DISPUTE CASE NO.5/2007.

The 3rd October 2007.

Present : Shri G.K. Mishra, O.S.J.S. (Junior Branch)

Presiding Officer,
Labour Court, Jeypore
Dist : Koraput

Between: The Chairman-*cum*-Managing Director,

O.S.R.T.C., Paribahan Bhawan,
At/P.O.-Bhubaneswar,
Dist: Khurda.

... First-Party—Management.

Versus

Its workman,
Shri Nanda Kishore Padhy,
S/o- Late Krupasindhu Padhy,
At- Kaithabadha,
P.O.-Khalingi,
Dist: Ganjam.

... Second-Party—Workman.

Under Section : 10 & 12 of the Industrial Disputes Act, 1947.

Appearances : For the Management

.. Shri B.K. Panda
Junior Clerk of O.S.R.T.C.,
Bhubaneswar.

For the Workman

.. Shri K.Chandra Mishra, Advocate
Berhampur

Date of Argument

.. 27-09-2007

Date of Award

.. 03-10-2007

1. The Government of Orissa in the Labour & Employment Department in exercise of the power conferred upon them under sub-section (5) of Section 12 read with clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following disputes vide their Order No. 227 (4) dated the 6th January 2007 for adjudication of the following disputes :—

SCHEDULE

“Whether the action of termination of services of Shri Nanda Kishore Padhy Ex-peon O.S.R.T.C., Berhampur by way of dismissal by the Disg Transport Manager (A) OSRTC, Cuttack the appointing and disciplinary authority, Berhampur Zone w.e.f. 8th March 2002 is legal and/or justified ? If not to what relief Shri Padhy is entitled ?”

AWARD

2. This is a case originated out of the reference submitted by the Court for the determination of an issued as regards the validity and justifiability of the termination of the workman coupled with the relief to be granted in computation of such determination.

3. The Facts presented by the workman may be described tersely that he being seriously ill he could not attend the job from 1st August 2000 to 15th August 2000. Although he joined in duty on 16th August 2000 but the authority concerned with malafied intention terminated his service w.e.f. 6th February 2002 thereby challenged the order being illegal and unjustified which is not in accordance with the principles of natural justice.

4. The Management on the contrary obnegated the entire assertions put forth by the workman and contended *inter-alia* that the workman having remained absent continuously from 1st August 2002 to 6th August 2002, he was validly terminated from his service in consequence or the non furnishing of reply to the show cause sought for by the Management. In this connection it is urged by the Management that the workman having committed misconduct by remaining absence for a long period without permission from the authority he has no *locus standi* to file this case which should be entailed in dismissal. On disputedly the status of the workman is a permanent employee working under the Management. It is a well settled law that the service of the permanent employee can not be terminated by an authority basing upon issuance of simple notice or show cause which is violative to the principles of natural justice as well as, the provision enumerated U/s-14 and 16 of the Indian of constitution. Reliance has been placed in a decision rendered by our Apex Court in O.P. Bhandari Vrs. Indian Tribal Development Corporation Ltd.,

AIR-1987 S.C.-111. Even if any regulation prescribed under standing orders by any authority for automatic termination for the cause of unauthorised absence from duty can be considered to be capable of vicarious discrimination and can be held to be marked here and fair rule as has been propounded by West State Electricity Board Vrs. Desbandhu Goes AIR-1995 S.C.-712- In this connection our Apex Court has reiterated and emphasised in no uncertain term that principles of natural justice would have to be read in to the provision enumerated in any standing order. Reliance has been mentioned on a decision rendered in D.K. Jadav Vrs. J.M.A. Industry Ltd., 1993 (3-SC) 259.

5. The charge regarding the continuous absence from the duty is considered to be misconduct as admitted by the Management which has been incorporated in the standing order under rule-110, clause-3 of OSRTC regulation-1978 mentioned that no employee will proceed on leave without obtaining enquiry officer's permission to avail himself of the leave pending formal sanction or the sanction of leave applied by him from the immediate authority as case may be these not doing so will be guilty of misconduct and decided being considered as absence without leave will render themselves for proper disciplinary action. The above provisions clearly indicate that the absence without leave is considered to be a misconduct and for that disciplinary action shall be taken for determination of the punishment. In the case of misconduct general burden lies on the employer to prove by adducing evidence whether there was genuineness of absence or not. Of Simultaneously opportunity must be given to the O.P. for explaining the circumstances as to under which circumstance he went on leave and for adducing evidence in support of his absence. The disciplinary authority can not *sumoto* take any action without resorting to any proceeding conducted by a designated enquiry officer. Basing upon the report of such officer's action can be taken by imposing punishment as deemed proper. The principles of natural justice is well imported in to the standing order. The non-compliance of natural justice will discredit declaration taken by the authority which will be considered to be *null and void*. The option lies on the disciplinary authority to terminate or not the service of the workman but the discretion should not be arbitrary and capricious. It should be fair just and proper before taking any action against the employee the employer must take in to consideration, the circumstances under which the workman remained absent, whether there was an extension of leave by filling an application and where on medical certificate was furnished in the mean time. There are the circumstances to be explained by the workman. Unless an opportunity is given it would not be possible on the part of the workman to reasonably explain the cause of absence. The disciplinary authority appears to have taken action without resorting to any initiation of departmental proceeding. The disciplinary authority could have framed charges of misconduct with appointment of an enquiry officer in order to investigate the genuineness of the charges by giving due opportunity to the workman. Despite the absence of the workman in the proceeding the enquiry officer have got right to proceed *ex parte* by examining the materials available on the record and submitted report before the authority concerned. The authority on basis of that enquiry report can impose punishment by giving further scope to the workman in order to say on the matter of punishment. The disciplinary authority has neither framed charges for misconduct nor the matter

of misconduct was investigated by an enquiring officer nor any opportunity has given to the workman for being heard on the matter. The disciplinary authority appears to have not complied the provisions enumerated in the standing order nor followed of principle of natural justice. The employer concerned being a permanent worker he should not be deprived of his job by the authority by issuing notice. The worker has got to right which includes right to livelihood as enshrined under article-21 of the Indian Constitution. Unless there is a right to livelihood, there is no meaning to the right to life. The denial of right to work will denude to the right to livelihood to as a consequence there of the workman would be succumbed to starvation. Therefore every permanent employee who has rendered service for a longer period should be guaranteed with job as emphasised by our S.C. in *Upendra Kumar V. State of India* AIR-1998, LIC-1545. The permanent employee can not be deprived of his job except in accordance with the procedure. It is admitted by the Management that no enquiry has been conducted to prove the charges of the misconduct without recouring to the disciplinary proceeding. The action of the authority concerned is purely illegal and in-operative in law. In absence of any compliance of natural justice or the standing order, the action of the authority is considered to be purely illegal and unjustified. Since no opportunity was given to the workman for explaining the circumstances or cause of his absence the termination of the service by the Management is un-warranted and liable to be set-aside. Further more the punishment imposed on the workman for terminating his service is considered to be very harsh and disproportionate. For simple absence for some period will not entail dismissal from the service. otherwise punishment could have been imposed with break of service otherwise by reinstating in the job which would have given a scope to the workman to have a job atleast in order to maintain his livelihood where the gross misconduct is apparently observed punishment could have been justified. The absence being under compelling circumstances which was not within the reach of the workman such a harsh punishment should not have been imposed. Therefore I find it proper to set-aside the punishment. The second-party-Workman has since been retired on the 31st October 2005. There is no necessity of reinstating in the service. The Workman did not put forth any thing before the Court in his statement that he was not gainfully employed during the period till the case is disposed of. Unless the gainful employment is not proved by the workman, the question of back wages to be paid will not come into the picture. There is no universal application that the result of every illegal termination would provide a scope for granting relief of reinstatement and full back wages. Reliance has been placed in a decision rendered by our supreme court in *Bansidhar V. State of Bangalore* 2007(117) F.L.R.-687 in such contingency it is not possible to grant reinstatement and relief of back wages except awarding compensation as deemed proper for the service rendered by the Workman. In such situation justice would be best served if such lump sum amount of Rs. 50,000/- is paid to the workman. The Management having dismissed the workman basing upon no enquiry he is liable to pay the aforesaid compensation amount fixed for the purpose.

The reference is answered accordingly.

ORDER

The Award is passed in favour of the workman on contest. The Management is directed to pay the compensation amount of Rs. 50,000/- to the workman within six months, otherwise he be at liberty to take shelter of the appropriate authority for realisation of the afore-said amount.

Dictated and Corrected by me.

G.K. Mishra, O.S.J.S. (Junior Branch)

dt. 03-10-2007

Presiding Officer,

Labour Court,

Jeypore ,

Koraput.

G.K. Mishra, O.S.J.S. (Junior Branch)

dt. 03-10-2007

Presiding Officer,

Labour Court.

Jeypore,

Koraput.

By order of the Governor

P. MALLICK

Under-Secretary to Government